Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

DEBORAH M. AGARD
Law Office of Deborah M. Agard
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KEITH MARCHAL,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-0612-CV-1125
	)	
PAULA CRAIG,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Christopher Haile, Commissioner
Cause No. 49D06-0203-DR-503

June 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Keith Marchal ("Father") appeals the trial court's order on his petition for modification of child support. We affirm.

Issues

Father raises three issues, which we consolidate and restate as the following two:

I. Whether the trial court erred by ordering Father to pay his income share of $14,000.00 for his son's college-related expenses; and

II. Whether the trial court erred by denying Father's request for a reduction in child support to offset his travel expenses to see his son's college football games.

Facts and Procedural History

The marriage of Father and Mother was dissolved on November 14, 1991. At that time, they entered into a settlement agreement that included terms of custody and support regarding their son, E.M., who was born in 1988. Father and Mother agreed to share joint legal and physical custody of E.M. In April 1993, Mother filed an emergency petition for modification of custody, which the trial court granted in August 1993. Soon after, the trial court awarded her sole legal custody of E.M.[1] On June 7, 1996, the trial court ordered that Father's visitation be supervised.[2] On September 24, 1996, the trial court continued that order and ordered Father to pay $8,500.00 of Mother's attorney fees. In January 1997 and February 1998, Father was found in contempt for failing to pay child support. On July 24,

[1] This Court later reversed the trial court's order. *See Marchal v. Craig*, 681 N.E.2d 1160, 1163 (Ind. Ct. App. 1997).

[2] The CCS entry states, "Court having heard evidence as to serious problems involving current visitation, the court now suspends visitation for the weekend of June 7-9 and thereafter orders supervised visitation until the final order of this court is entered." Appellant's App. at 18.

1998, Father's visitation rights were suspended. In August 1998, Father was again found in contempt for failure to pay child support. According to a trial court order issued on March 2, 2000, Mother and Father agreed that Father's visitation should be suspended permanently, based upon the recommendation of the custody evaluator and the guardian ad litem that Father should have no parenting time unless E.M. should request it. Also by agreement, a prior protective order was continued indefinitely, restraining and enjoining Father from "molesting, harassing, bothering, or otherwise disturbing the peace of Paula Craig, [Paula's husband] Richard Craig, and [E.M.], at their place of residence, places of employment or where ever else they may be in and about the Counties of Marion & Hamilton, Indiana[.]" Appellee's App. at 6.[3] Also on March 2, 2000, the trial court ordered Father to pay $21,560.84 in attorney fees incurred by Mother in the case.

On February 24, 2003, the trial court ordered the parties to attempt to reach an agreement as to Father's parenting time and school access. On August 2, 2003, Father filed a request for hearing and an emergency request for custody modification. On January 22, 2004, the parties agreed that Father's parenting time would consist only of his attendance at E.M.'s sporting events, where he was to sit on the visitor's side of the field. He was not permitted to have contact with Mother or E.M. The trial court denied Father's motion to strike the order and his motion to correct error.

On June 8, 2005, Mother filed with the trial court a notice that she had relocated to California. On May 17, 2006, she informed the trial court that she was planning to move

---

[3] Mother states that this protective order remains in effect.

from California to Florida. Father filed a motion for contempt citation against Mother and a motion to correct error, alleging that Mother had failed to timely notify him of her 2005 relocation. He also filed a petition to modify custody support obligation, citing the fact that E.M. had earned a full football scholarship to University of Nevada Las Vegas ("UNLV") and therefore would not have expenses associated with college attendance. A hearing was held on Father's motions on October 12, 2006. On October 19, 2006, the trial court issued an order that included the following findings of fact and conclusions thereon:

1. The parties are the parents of one child namely [E.M.], age 18.
2. [Father] is currently required to pay $137.00 per week child support plus $25.00 per week on a support arrearage which the Court finds is $5,300.00.
3. The Court finds that there is a substantial change of circumstances in that [E.M.] is now attending college on a football scholarship and will only be home five weeks per year.
4. Although [Father's] Child Support Worksheet admitted as Exhibit 2 does not affect earning of the parties beyond base salary, the Court will adopt said worksheet based on the stipulation of [Mother].[4]
5. The Court finds under that worksheet that [Father] would pay $7.78 per week child support.
6. However the Court finds that there are extraordinary circumstances which require the payment of additional support for the child.
7. Although [E.M.] is receiving a scholarship that pays for tuition and room and board during the school year, it does not cover additional expenses as outlined on Respondent's Exhibit B.
8. [E.M.] is a large young man who must maintain a regimen for playing Division IA football including training, eating to maintain size, and living in an apartment during the summer to participate in off season conditioning.
9. The Court finds that there are approximately $14,000.00 of annual additional expenses necessary to support [E.M.] based upon Exhibit B.
10. The Court finds that the parties should contribute to these expenses based upon their income shares.

---

[4] Father's child support obligation worksheet showed his percentage share of total weekly adjusted income as 26.0329% and Mother's share as 73.9671%.

11. The Court finds that support should be modified to $77.86 per week ($7.78 plus $70.08 - $14,000 × .260329 divided by 52 weeks).
12. The Court finds that [Father] should further pay $50.00 per week on his support arrearage.
13. The Court finds that [Father's] request for a reduction in support to offset travel costs to attend [E.M.]'s football games should be denied because [E.M.] is red shirted[5] this season and [Father] has not seen [E.M.] in seven years.
14. The Court finds that [Father's] Petition to hold [Mother] in contempt for failure to give notice of relocation should be denied because he has failed to demonstrate that her conduct was intentional or that he was harmed in any way.

IT IS THEREFORE ORDERED:

1. [Father's] child support obligation is modified to seventy-eight dollars and eighty-six [cents] ($78.86)[6] per week.
2. [Father] shall pay an additional $50.00 per week on the accumulated arrearage of $5,300.00.
3. All payments shall be made to [Mother] by income withholding order through the support office.
4. [Mother] shall maintain health insurance on [E.M.] and pay the first $224.00 in annual uninsured health care expenses.
5. Any additional expenses shall be paid 26% by [Father] and 74% by [Mother].
6. [Father's] Petition for Contempt and request for attorney fees is denied.

Appellant's App. at 57-59. Father now appeals.

[5] "Redshirt" is a term used in American college athletics. Typically, a student-athlete has four years of eligibility in a given sport, to coincide with the standard four-year calendar for obtaining a bachelor's degree. For various reasons, some student-athletes may opt to attend only classes and practices with the team; this process is known as redshirting. The student-athlete does not use one of his or her four years of eligibility in that season. Using this mechanism, a student-athlete has up to five academic years to use the four years of eligibility. Wikipedia, The Free Encyclopedia, "Redshirt (college sports)," http://en.wikipedia.org/wiki/Redshirt_%28college_sports%29 (last visited on May 25, 2007). Father argues that it is possible that E.M. will be called to play in a game despite his redshirt status if another player is injured, for example.

[6] It appears that the trial court made a scrivener's error here. In finding number 11, it stated that Father should pay $77.86 per week, and that amount is consistent with its calculation of $14,000 × .260329 divided by fifty-two weeks.

Discussion and Decision

I. Post-Secondary Education Expenses

Father argues that the trial court erred by finding $14,000.00 in annual expenses for E.M.'s education.[7] The trial court in this case issued findings of fact and conclusions thereon. Our standard of review in such cases is well settled:

> In reviewing the judgment of the trial court, we must first determine whether the evidence supports the findings, and second, whether the findings support the judgment. The findings and judgment will not be set aside unless they are clearly erroneous. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences from the evidence to support them. A judgment is clearly erroneous when it is unsupported by the findings of fact. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. Moreover, we will not reweigh the evidence or assess witness credibility.

Daugherty v. Daugherty, 816 N.E.2d 1180, 1183 (Ind. Ct. App. 2004) (citations omitted).

The trial court's decision regarding financial contributions to college endeavors will be affirmed unless the decision is clearly against the logic and effect of the facts and circumstances that were before it." *Deckard v. Deckard*, 841 N.E.2d 194, 202 (Ind. Ct. App. 2006). Although a parent is under no legal duty to provide a college education for his children, a court may nevertheless order a parent to pay part or all of such costs when appropriate. *Id*.

[7] In his appellant's brief, Father argues, "At best, the trial court's allocation of expense to Father is a requirement akin to payments for an avocation, where the child possesses a gift and the payments may help the child in a future career." Appellant's Br. at 9. As Mother points out, however, Father failed to raise this specific argument at trial, and it is therefore waived. *See Van Meter v. Zimmer*, 697 N.E.2d 1281, 1283 (Ind. Ct. App. 1998) ("A party may not advance a theory on appeal which was not originally raised at the trial court.").

At the hearing, Mother presented to the court a document entitled, "Mother's Estimation of [E.M.'s] Miscellaneous and Non-Scholarship Expenses Per Year," which lists the following expenses:

Transportation	$1,600.00
Entertainment	2,300.00
Clothing	1,800.00
Laundry	1,040.00
School Supplies	600.00
Food—[12] weeks per year	[3,876.00][8]
Lodging (summer only)	2,000.00
Vehicle cost, gas, insurance, maintenance, repairs, tags	4,000.00
Utilities (summer only)	264.00
Miscellaneous	1,500.00
TOTAL ESTIMATED YEARLY MISCELLANEOUS AND NON-SCHOLARSHIP EXPENSES	[$18,890.00][9]

Appellee's App. at 12. During his testimony, Father agreed that he should be obligated to contribute to E.M.'s expenses not covered by his scholarship. Tr. at 23.

The trial court found, "based upon [Mother's written estimation of expenses]," that E.M. needs approximately $14,000.00 per year in addition to his scholarship benefits. Father claims that the order is improper because it does not specify which expenses the trial court deemed necessary. As a result, Father says, this Court is unable to properly review the trial court's decision. We disagree. Mother presented a written estimation of annual expenses

[8] The list of expenses that Mother presented to the trial court showed an estimated cost of $7,752.00 for food. At the hearing, Mother agreed to reduce this figure by 50% after recognizing that E.M.'s scholarship included a meal plan of fifteen meals per week during the off-season.

[9] The list actually shows a total of $22,856.00, but we have reduced the total to reflect Mother's revision to the estimated cost of E.M.'s food. See note 7 above.

totaling $18,890.00. Thus, the trial court's determination of necessary expenses in the amount of $14,000.00 is clearly supported by the evidence. Finding no abuse of discretion, we affirm on this issue.

II. Denial of Setoff for Father's Attendance at E.M.'s Football Games

Father contends that the trial court erred by denying him a reduction in his support obligations to offset travel expenses that he will incur to attend E.M.'s football games at UNLV. The trial court denied the request because "[E.M.] is redshirted this season and [Father] has not seen [E.M.] in seven years." Appellant's App. at 58. Father claims that "[t]here is no indication in the evidence that [Father], of his own volition, had no contact with [E.M.] during those years." Appellant's Br. at 16. Whether Father wanted to see E.M. is irrelevant, as the record reveals that in early 2000, Father in fact agreed to permanently forfeit his visitation rights after a physician and the guardian ad litem determined that his visits were having a "detrimental effect … on [E.M.'s] emotional well-being, even when supervised". Appellee's App. at 1-2. An order approving that agreement was entered by the trial court on March 2, 2000.

On January 22, 2004, the trial court entered an order reflecting the agreement of Father and Mother to a modification of Father's visitation rights. In part, the order states, "[Father] is allowed to attend E.M.'s school sporting events. At said events, Father shall not talk to [Mother] or [E.M.] and shall remain in the opposite team seating facility from [Mother]." Appellee's App. at 7.

In sum, the evidence supports the trial court's decision not to grant Father a setoff for expenses to travel to UNLV. Whether E.M. plays in every game or sits on the bench the entire season is not necessarily the issue. What is more relevant, in our view, is that we are unaware of any legal authority which supports the idea that Father's attendance at his son's extracurricular activities should be subsidized from the funds otherwise allocated for the child's support. The trial court did not err in denying Father's request.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.